



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Ms. Ruth Hertel
City Administrator
City of Angleton
121 South Velasco
Angleton, Texas 77515

OR96-0407

Dear Ms. Hertel:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39266.

The City of Angleton (the "city") received a request for information seeking

1. A copy of "all" information contained within the Personal (sic), files, of all City employees, to and including the Police Department.

2. A copy of "all" wages as reported to the IRS for the year 1995. This request is for all persons receiving any or all types of wage or benefit from your city. Please break this down by employee name and job description, please begin with base salary or per hour rate and expound from there any other income, benefit, bonus or any other income of any type.

3. A copy of all travel and expense reports paid by the city to anybody for the year 1995. Please provide copies of all "receipts" for the same.

4. A copy of any resolution ever passed, in the history of your town/city that in powers (sic) the city manager to issue any type of payroll bonus, with or without city council approval. If you ever passed such a resolution, is it enforce (sic) at this time?

5. A copy of the city manager's contract/work agreement at the time of employment, and any change to his/her contract/work agreement.

6. A copy of the city manager's last (2) job performance reviews and date of same. If the city manager has not had a current review please enclose a detail (sic) explanation of why not!!

7. A copy of city's policy pertaining to vehicle use. Who is eligible to use city vehicles and why?

8. Does the city manager have a city owned or leased vehicle to use at his/her discretion 24 hours a day?

9. Please take a few minutes and answer the following questions.

a. Does your city currently or previously employ (sic) a full time CPA ?

b. Does your city currently or previously employ (sic) (1) or more full time Class 4 Tax Assessor Collectors, if so does your appraisal district have an office for the purpose of collection of tax, and does this office collect your city taxes?

c. Does your city have a policy concerning performance review?

d. Does your city have a retirement plan? If so please send me a copy of this plan.

e. Does your city pay its Council members, if so, how much per month/per year. Do they enjoy any other benefits such as paid insurance, vehicle allowance, utility discounts, travel and entertainment, expense, etc.

f. Are your city council members elected at large or by precinct?

You have asked this office "to render an opinion as to what information in the personal (sic) files of City employees, if any, is subject to this request."

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The

act also mandates that a "governmental body that wishes to withhold information must submit written comments stating the reasons why the information should be withheld." Gov't Code § 552.301(b). The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). When a request for an open records decision is not made as prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision does not comply with the statutory requirements. In this instance, you have submitted no written comments stating the reasons why the information should be withheld, you stated no statutory exceptions, nor did you provide this office with a copy of the requested information. Consequently, we find that you have not met your burden under sections 552.301 through 552.302 of the act and that the information is presumed to be public. Open Records Decision No. 195 (1978).¹

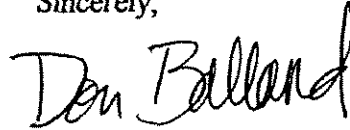
In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). We caution, however, that the records at issue may contain information deemed confidential by law which should not be made public. See Open Records Decision No. 195 (1978). See also Gov't Code § 552.352 (distribution of confidential information is criminal offense). We have included for your review a sampling of common types of information deemed confidential.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

¹ We note, however, that you informed the requester that a governmental body is not required to organize information, to prepare answers to questions, or to create new documents in response to the request. The act applies only to information in existence. Thus, the act does not require a governmental body to prepare new information in response to a request. Attorney General Opinion H-90 (1973); Open Records Decision No. 342 (1982) at 3. Moreover, a governmental body need not organize information in a particular way pursuant to an information request. Open Records Decision 599 (1992) at 5. Additionally, the act does not require a governmental body to prepare answers to questions or do legal research. See Open Records Decision Nos. 563 (1990); 555 (1990).

determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 39266

Enclosures: List of Confidential Information

cc: Mr. Kenny Harris
P.O. Box 743
Denver City, Texas 79323-0743
(w/List of Confidential Information)